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No. 80-317

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNIVERSITY OF TEXAS, ET AL.,
Petitioners,

v.

WALTER CAMENISCH,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AMERICAN COALITION OF CITIZENS WITH DISABILITIES; ASSOCIATION ON HANDICAPPED STUDENT SERVICE PROGRAMS IN POST-SECONDARY EDUCATION; EPILEPSY FOUNDATION OF AMERICA; NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS; NATIONAL EDUCATION ASSOCIATION; PENNSYLVANIA SOCIETY FOR THE ADVANCEMENT OF THE DEAF; TEXAS PROTECTION AND ADVOCACY SYSTEM: ADVOCACY, INC.; UNITED CEREBRAL PALSY ASSOCIATION AND BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	i
MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE	v
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	1
I. SECTION 504 REQUIRES THAT RECIPIENTS PROVIDE EFFECTIVE ACCOMMODATIONS IN ORDER THAT QUALIFIED HANDICAPPED PERSONS MAY HAVE THE SAME OPPORTUNITY TO BENEFIT FROM A RECIPIENT'S PROGRAM AS NON-HANDICAPPED PERSONS. ALTHOUGH SECTION 504 REQUIRES REASONABLE MODIFICATIONS, IT DOES NOT MANDATE THAT RECIPIENT UNDERTAKE TRADITIONAL AFFIRMATIVE ACTION STEPS	3
II. NUMEROUS COLLEGES AND UNIVERSITIES PROVIDE HANDICAPPED STUDENTS IN GENERAL, AND DEAF STUDENTS IN PARTICULAR, WITH AUXILIARY AIDS AND OTHER EFFECTIVE ACCOMMODATIONS WHICH AFFORD THEM EQUAL OPPORTUNITY TO PARTICIPATE IN AND DERIVE BENEFIT FROM ACADEMIC PROGRAMS. MORE OVER THESE COLLEGES AND UNIVERSITIES UTILIZE A WIDE VARIETY OF FEDERAL AND STATE FUNDING PROGRAMS TO ASSIST THEM IN MEETING THE COSTS OF PROVIDING SUCH AIDS	8

PAGE

A. Scope of Individual Handicapped Students Services Programs 10

B. Funding for Auxiliary Aids and Services to Handicapped Post-Secondary Students 12

III. RECOGNIZING THAT ELIMINATING DISCRIMINATION AGAINST QUALIFIED HANDICAPPED INDIVIDUALS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE MAY IMPOSE CERTAIN BURDENS UPON RECIPIENTS, CONGRESS HAS ENACTED NUMEROUS STATUTES, ESTABLISHED A WIDE VARIETY OF FEDERAL PROGRAMS, AND EARMARKED SUBSTANTIAL AMOUNTS OF FEDERAL DOLLARS TO AID RECIPIENTS IN MEETING THE OBLIGATIONS IMPOSED UPON THEM BY SECTION 504 14

A. Federal Assistance to Students and Institutions of Higher Education 15

B. Federal Rehabilitation Programs for Handicapped Persons 20

C. Federal Program for the Assistance of Persons with Developmental Disabilities 25

D. Federal Programs to Assist in the Training of Educational Personnel 26

E. In Those Instances Where A Disabled Student Or A College Or University Is Ineligible To Participate In The Federal Assistance Programs Described In This Sec-

PAGE

tion, The Ultimate Responsibility For The Provision Of Necessary Auxiliary Aids Falls Upon The Post-Secondary Institution Receiving The Federal Financial Assistance 28

CONCLUSION 30

APPENDIX A: Letters From Colleges and Universities Describing Policy On Provision Of Interpreter Services to Deaf and Hearing-Impaired Students:

1. Albright College 1a
2. Boston University 2a
3. Delaware County Community College 4a
4. Fordham University 5a
5. New York University 6a
6. Queens College 11a
7. Temple University 12a
8. Washington University 14

APPENDIX B: Survey Of Colleges And Universities In Pennsylvania and New York Concerning Their Policies On The Provision Of Interpreter Services To Deaf And Hearing-Impaired Students 15a

APPENDIX C: Statement Of Policy Of Arkansas Department of Human Services, Division Of Rehabilitation Services, Concerning The Provision Of Interpreter Services To Deaf And Hearing-Impaired Students In Institutions of Higher Education 21a

TABLE OF AUTHORITIES

Cases

	PAGE
Brown v. Bates, 363 F. Supp. 897 (N.D. Ohio 1973)	16
Campbell v. Kruse, 434 U.S. 808 (1977) (Mem.)	6
Gary B. v. Cronin, No. 79-C5383 (N.D. Ill., June 10, 1980)	5
Henkin v. Department of Social Services, 498 F. Supp. 659 (D.S.D. 1980)	26
Jones v. Illinois Department of Social Services, No. 79-C5396 (N.D. Ill., Jan. 12, 1981)	21
King v. Smith, 392 U.S. 309 (1968)	28
Lau v. Nichols, 414 U.S. 563 (1974)	4, 6
Oklahoma v. Civil Service Commission, 330 U.S. 127 (1947)	28
Southeastern Community College v. Davis, 442 U.S. 397 (1979)	6, 7, 8, 15
Tatro v. Texas, 625 F.2d 557 (5th Cir. 1980)	5

Statutes

20 U.S.C. § 681	8
20 U.S.C. § 1070a	18
20 U.S.C. § 1070b	18
20 U.S.C. § 1070d-1	17, 18
20 U.S.C. § 1087aa	27
20 U.S.C. § 1087ee	27
20 U.S.C. § 1101	27
20 U.S.C. § 1119	27
20 U.S.C. § 1134d	18
20 U.S.C. § 1134n	18
20 U.S.C. § 1221-1	15

PAGE

20 U.S.C. § 1221d 19
20 U.S.C. § 1231c 20
20 U.S.C. § 1401, *et. seq* 16
20 U.S.C. § 1431 28
29 U.S.C. § 706 ..... 3, 22
29 U.S.C. § 723 ..... 21, 22
29 U.S.C. § 762 23
29 U.S.C. § 763 22
29 U.S.C. § 774 ..... 22, 23
29 U.S.C. § 775 ..... 22, 23
29 U.S.C. § 777e 24
29 U.S.C. § 792 24
29 U.S.C. § 794 ..... *passim*
42 U.S.C. § 2751 16
42 U.S.C. § 2928 16
42 U.S.C. § 6000, *et. seq* 25, 26
42 U.S.C. § 6001 26
42 U.S.C. § 6012 vi

Regulations

45 C.F.R. § 84.44 ..... *passim*
45 C.F.R. Part 84, Appendix A 6, 7, 15, 21
45 C.F.R. § 157.2 17
45 C.F.R. § 175.23 17

Legislative Authorities

S. Rep. No. 93-1297, 93rd Cong., 2nd Sess., *reprinted in* [1974] U.S. Code Cong. & Ad. News 6373 ..... 3, 5
117 Cong. Rec. H 45974 3
118 Cong. Rec. S525 3
124 Cong. Rec. H369 (*daily ed.* May 16, 1978) 25

PAGE

Other Authorities

Capalli, R., RIGHTS AND REMEDIES UNDER FEDERAL GRANTS (1979) 29

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Office of the Inspector General, U.S.D.H.E.W., "Guide for Audits of National Direct Student Loan Program, College Work-Study Program and Supplemental Educational Opportunity Grants Program" (July 1978) 19

President's Committee on Employment of the Handicapped, "The College Student with a Disability: A Faculty Handbook" (undated) 11

President's Committee on Employment of the Handicapped, "The Disabled College Freshman" (undated) 9

U.S.D.H.E.W. Memorandum, "Development of Cooperative Agreements Between State Vocational Rehabilitation Agencies and State Associations of Student Financial Aid Administrators Concerning Financial Aid and Other Assistance for Handicapped Students Enrolling in Institutions Of Post-Secondary Education" (June 22, 1979) 21

U.S. Office of Education, "Auxiliary Aids: A Resource Guide for Post-Secondary Schools, Rehabilitation Agencies and Handicapped Individuals" (*draft* Nov. 20, 1980) 16, 17

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The American Coalition of Citizens with Disabilities, the Association on Handicapped Student Service Programs in Post-Secondary Education, the Epilepsy Foundation of America, the National Association of Protection and Advocacy Systems, the National Education Association, the Pennsylvania Society for the Advancement of the Deaf, the Texas Protection and Advocacy System, and the United Cerebral Palsy Association respectfully move this Court for permission to file the attached Brief Amici Curiae. The proposed *amici* are "consumer," legal advocacy and educational organizations who represent and support the interests of handicapped persons. These organizations and their memberships are vitally interested in the outcome of this case as it regards the accessibility of post-secondary education to handicapped persons.

The American Coalition of Citizens with Disabilities, Inc. (ACCD) is a not-for-profit organization whose

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members include organizations of disabled individuals. ACCD's national members include the American Council of the Blind, Epilepsy Foundation of America, National Association for Retarded Citizens, National Association of the Deaf, National Association of the Physically Handicapped, National Paraplegia Foundation, Paralyzed Veterans of America, and United Cerebral Palsy Associations. ACCD seeks to speak with a unified voice advocating on behalf of the nation's entire disabled population. ACCD has taken an active role in attempting to remedy past practices of discrimination against physically and mentally handicapped citizens.

The Association on Handicapped Student Service Programs in Post-Secondary Education (AHSSPPE), with a membership of approximately 500 persons, was established in 1978 to provide a vehicle to strengthen the professionalism, the expertise, and competency of persons working with handicapped students on college campuses. In addition, the Association is committed to promoting equal rights and opportunities for handicapped post-secondary students and graduates.

Epilepsy Foundation of America (EFA) is a non-profit organization established to promote research, support educational and vocational programs, and provide educational information in regard to epilepsy and the problems faced by persons having epilepsy. EFA's national office in Washington, D.C. is responsible for national programs which include advocacy and patient services. EFA has worked diligently to ensure that persons with epilepsy are not denied the opportunity to participate fully in educational programs at all levels.

The National Association of Protection and Advocacy Systems (NAPAS) is an organization consisting of the executive directors of the state protection and advocacy systems. Under Section 113 of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6012, each state is required to have in effect a system to protect and advocate the rights of developmentally dis-

abled individuals. As the national organization of the protection and advocacy systems, NAPAS is dedicated to furthering the human and legal rights of disabled persons.

The National Education Association (NEA), the nation's largest professional organization with a membership of 1.7 million persons, is an independent, voluntary entity whose purpose is to advance the interests of the profession of teaching and to promote the cause of education. To this end NEA has long advocated free, appropriate education for all handicapped individuals, including the provision of support services to meet the learning needs of disabled students.

The Pennsylvania Society for the Advancement of the Deaf (PASD) is a consumer organization dedicated to securing and advancing the needs of deaf persons in the state of Pennsylvania. As such, PASD actively supports the provision of necessary auxiliary aids to deaf individuals in higher education.

Advocacy, Inc. is the Texas protection and advocacy system. Its purpose is to ensure that disabled persons are not denied their legal and human rights, in particular, the right to education. Advocacy, Inc. has a special interest in the outcome of this case, as it concerns the accessibility of higher education to disabled individuals served by the agency.

United Cerebral Palsy Association (UCP) is a nationwide network of community agencies serving the lifetime needs of children and adults with cerebral palsy. UCP has long sought equal access to education for handicapped individuals.

The present case raises questions about the rights of qualified handicapped students to participate fully in federally assisted higher education programs. To these questions, the proposed *amici* bring a unique perspective, beyond the more confined presentations of the specific parties to the case. As educators, disabled individuals, and legal advocates, the proposed *amici* seek to ensure that no

qualified handicapped student is denied the opportunity to gain the benefits of a higher education.

As handicapped individuals, the proposed *amici* would discuss the need for auxiliary aids for certain qualified disabled students in order that illegal discrimination on the basis of handicap may be eliminated by institutions of higher education. As legal advocates, the proposed *amici* would present a detailed analysis of the numerous federal programs that can be used by colleges and universities to assist in the provision of auxiliary aids to handicapped students. And, as educators, the proposed *amici* would offer factual descriptions of numerous programs throughout the nation whereby auxiliary aids are provided to qualified handicapped college students without charge to the student or unfair burden to the post-secondary educational institution.

Wherefore, the proposed *amici* respectfully pray this Court for permission to file the attached Brief Amici Curiae.

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INTEREST OF AMICI CURIAE

The interest of *amici curiae* is set out in the attached Motion for Leave to File Brief Amici Curiae, pp. v-viii, *supra.*

SUMMARY OF ARGUMENT

Section 504 was intended by Congress to bring handicapped persons into the mainstream of society. It is a promise of integration and of opportunity to participate in and benefit from federally assisted programs, so that handicapped persons might lead more meaningful lives and no longer have to struggle for the dignity of treatment non-handicapped persons take for granted.

In order to ensure that this promise is not empty and unfulfilled, Section 504 must be construed to require, not simply a *pro forma,* identity of treatment of qualified handicapped persons, but also, in appropriate contexts to require effective accommodations which allow qualified disabled persons equal opportunity to participate in and benefit from federally assisted programs. Otherwise, the great majority of handicapped persons will remain in the same tragic state of segregation as they were before the passage of Section 504.

The Department of Health, Education and Welfare has properly included an auxiliary aid requirement in its Section 504 regulations stipulating that interpreter services be provided by post-secondary institutions for qualified deaf students where necessary for their effective participation in academic programs.

The experiences of many colleges and universities throughout the country in providing these services makes manifest that such accommodations can be furnished with remarkable success. Moreover, due to efficacious utilization of a wide array of federal and state funding schemes, the programs operated by these institutions demonstrate conclusively that interpreter services can be provided without cost to the student and with minimal obtrusion into the recipient's operation.

Finally, although the interpreter requirement imposes certain obligations upon recipients, Congress has allocated substantial amounts of federal money through numerous spending programs in order to help recipients meet the costs of complying with this regulation.

I.

SECTION 504 REQUIRES THAT RECIPIENTS PROVIDE EFFECTIVE ACCOMMODATIONS IN ORDER THAT QUALIFIED HANDICAPPED PERSONS MAY HAVE THE SAME OPPORTUNITY TO BENEFIT FROM A RECIPIENT'S PROGRAM AS NON-HANDICAPPED PERSONS. ALTHOUGH SECTION 504 REQUIRES REASONABLE MODIFICATIONS, IT DOES NOT MANDATE THAT RECIPIENTS UNDERTAKE TRADITIONAL AFFIRMATIVE ACTION STEPS.

The most appropriate point of departure in this case is the language of Section 504. In relevant part, it provides:

> No otherwise qualified handicapped individual in the United States, as defined in § 706 (6) of this title, shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

29 U.S.C. § 794 (1976).

Keeping in mind this statutory language, the types of recipient action which will comport with Section 504 are readily understood. Section 504 is not necessarily complied with when a recipient merely allows a handicapped person to enroll in its program or activity in a nominal fashion. The equality of treatment which Section 504 requires is not a *pro forma*, identity of treatment, but rather is best defined by measuring the extent of the actual opportunity afforded the handicapped person to participate in a given program.

In the instant case, the University of Texas argues that it has fulfilled its Section 504 obligation by merely allowing the respondent, Walter Camenisch, into its classroom. This action by the University, however, does not go to the substance of what Section 504 was intended to provide — equal opportunity for handicapped persons to participate in federally assisted programs.[1] By merely

[1] That this is the purpose and intent underpinning Section 504 is manifested throughout its legislative history. E.g. 118 Cong. Rec. S. 525 (1972) (remarks of Sen. Humphrey); 117 Cong. Rec. H 45974 (1971) (remarks of Rep. Vanik); S. Rep. 93-1297, pp. 38, 39-40; *reprinted in* [1974] U.S. Code Cong. and Administrative News 6389, 6390-91.

allowing the respondent into its program, the University of Texas did not provide the respondent with a functionally meaningful treatment. This treatment was no more functionally meaningful than if the University of Texas said to a person confined to a wheel chair that, yes, they could enroll in a certain class located in a building that could only be entered by climbing a set of steps but that, no, it would not provide them with a ramp to get them into the building. By allowing Mr. Camenisch into its program but still requiring him to pay for his own interpreter, the University in effect imposes a surcharge upon him for his handicap; whereas all non-handicapped students have an opportunity to participate in and derive benefits from the program without imposition of this surcharge.

Perhaps the clearest judicial exposition of the principle that equal treatment may require more than passive, *pro forma,* identity of treatment to breathe true meaning and substance into the equality required, can be found in *Lau v. Nichols,* 414 U.S. 563 (1974), a case with particular relevance to the instant one. *Lau* involved a class-action suit brought by non-English speaking Chinese-American students who alleged that they had been effectively excluded from participation in an educational program because they received no supplemental instruction in the English language. The students claimed this was a violation of Section 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1975).

Justice Douglas, in construing Section 601 for the majority held that:

> There is not equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. . . . It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program.

Id. at 566.

It is crucial to note here that the legislative history of Section 504 makes it clear that it was sedulously patterned after the language of § 601 of the Civil Rights Act of 1964 and was intended to provide the same degree of anti-discrimination protection. S. Rep. No. 93-1297, 93rd Cong. 2nd Sess. 39, *reprinted in* [1974] U.S. Code Cong. and Admin. News 6373, 6390.[2]

Similarly, federal courts which have considered the issue have found that, in certain instances, Section 504 requires a duty on the part of recipients to accommodate handicapped persons.

In *Tatro v. Texas,* 625 F.2d 557 (5th Cir. 1980), the 5th Circuit Court of Appeals, in ruling that the failure of a school district to provide clean instrument catherization (CIC) was a violation of § 504, stated:

> . . . [the plaintiff] has been excluded from the school district's programs by the district's refusal to provide CIC. Without the provision of CIC to [the plaintiff], she will be unable to participate in the preschool programs of the school district. Such exclusion is expressly condemned by Section 504.

Id. at 564.

In *Gary B. v. Cronin,* No. 79-C5383 (N.D. Ill. June 10, 1980), a class of emotionally disturbed children sought declaratory and injunctive relief with respect to an Illinois regulation which excluded counseling and thereapeutic services from being considered special education or related services. The plaintiff class alleged that such a regulation was a violation of, *inter alia,* Section 504. The court, in

[2] The report states at p. 6390: "Section 504 was patterned after, and is almost identical to, the anti-discrimination language of Section 601 of the Civil Rights Act of 1964, and Section 901 of the Education Amendments of 1972. The section therefore constitutes the establishment of a broad government policy that programs receiving federal financial assistance shall be operated without discrimination on the basis of handicap . . ."

analyzing Section 504 and its implementing HEW regulations stated:

> Reading *Davis v. Southeastern Community College,* 442 U.S. 397 (1979)], with *Lau* and *Campbell* [*Kruse v. Campbell,* 434 U.S. 808 (1977) (Mem.)], this court concluded that a balancing test is appropriate with respect to HEW's regulations under Section 504. HEW, of course, has the task of identifying those cases where failure to act constitutes discrimination and may promulgate regulations imposing affirmative duties on recipients of Federal funds, provided these duties do not become so burdensome as to significantly lower the recipient's standards.

Id.

The Department of Health, Education, and Welfare regulations have incorporated the concept that the equality intended to be extended to handicapped persons by Section 504 may of necessity require accommodations on the part of a recipient. As the Analysis to the Regulations states:

> . . . the term 'equally effective' . . . is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that, in order to meet individual needs to the same extent that the corresponding needs of non-handicapped persons are met, adjustments to regular programs may sometimes be necessary . . . This standard parallels the one established under Title VI of the Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau v. Nichols,* 414 U.S. 563 (1974).

45 C.F.R. Part 84, Appendix A, p. 380 (1979).

The specific H.E.W. regulation operative in this case states that recipients:

> . . . shall take such steps as are necessary to ensure that no handicapped students is denied the benefits of

> [or] excluded from participation in . . . the education program . . . because of the absence of auxiliary aids.

45 C.F.R. Sec. 84.44 (d) (1). The regulation goes on to include interpreters as such auxiliary aids in Section 84.44 (d) (2) (1979).

This regulation is a carefully crafted practical application of the intent and purpose underpinning Section 504 — the integration of handicapped persons into federally assisted programs. It does not attempt to make the recipient responsible for the overall integration of the handicapped student into campus life. In fact the regulation specifically precludes provision of aids for personal use or study. 45 C.F.R. Section 84.44 (d) (2) (1979).

Moreover HEW took into account the valid concerns expressed by some colleges and universities about the costs involved in complying with the auxiliary aid requirements. HEW emphasized that in large part such costs could be met by utilizing existing resources 45 C.F.R. Part 84 Appendix A, p. 392 (1979).

This Court, in *Southeastern Community College v. Davis,* 442 U. S. 397 (1979), held that if HEW had attempted to impose an affirmative action obligation upon recipients it lacked authority to do so. 442 U.S. at 412. Although this would preclude HEW from requiring that recipients implement traditional affirmative action steps such as quotas or seniority relief often used to remedy past discrimination against for example, racial minorities, the Court's language makes it clear that recipients under Section 504 still have a duty where appropriate to make accommodations in their programs. For instance, this Court stated in *Davis* that:

> Such [technological] advances also may enable attainment of these goals without imposing undue financial and administrative burdens upon a State. Thus situations might arise when a refusal to modify an existing program might become unreasonable and discriminatory.

Id. at 412-413.

Affirmative action as this Court spoke of it in *Davis*, cannot be taken to mean the imposition of any financial obligations on a recipient in order to accommodate handicapped persons. The use of the phrase "undue financial . . . burden" reflects this Court's understanding that Section 504 may require a recipient to spend a reasonable amount of funds in order to accommodate handicapped persons.

Thus, while Section 504 does not require traditional affirmative action steps by recipients in order to actively increase handicapped persons' position and number in federally assisted programs, it does require recipients to make reasonable modifications in their programs so that handicapped persons at least have an equal opportunity to participate in and derive benefits from them.

II.

NUMEROUS COLLEGES AND UNIVERSITIES PROVIDE HANDICAPPED STUDENTS IN GENERAL, AND DEAF STUDENTS IN PARTICULAR, WITH AUXILIARY AIDS AND OTHER EFFECTIVE ACCOMMODATIONS WHICH AFFORD THEM EQUAL OPPORTUNITY TO PARTICIPATE IN AND DERIVE BENEFIT FROM ACADEMIC PROGRAMS. MOREOVER, THESE COLLEGES AND UNIVERSITIES UTILIZE A WIDE VARIETY OF FEDERAL AND STATE FUNDING PROGRAMS TO ASSIST THEM IN MEETING THE COSTS OF PROVIDING SUCH AIDS.

Until the early 1970's, few alternatives were available to physically handicapped students who wished to continue their education beyond the high school level. Students who were hearing-impaired, for example, were usually limited to attending either Galludet College in Washington, D.C. or the National Technical Institute for the Deaf in Rochester, New York.[3] In the rare situation

[3] Galludet College is a liberal arts college for deaf and hearing-impaired students.

The National Technical Institute for the Deaf was established by federal law in 1969. 20 U.S.C. §§ 681-684 (1975). Its basic purpose is to provide technical and vocational training to deaf and hearing impaired post-secondary education students.

Both Galludet College and the National Institute for the Deaf are supported in large part by federal funds.

where a hearing-impaired individual was permitted to enroll at a local college or university, instruction was generally provided solely on an oral basis, thus denying the student the opportunity to effectively participate in or gain benefit from the educational experience. See, generally, Holm, "The University of Minnesota: New Programs for Deaf Students", *The Deaf American,* 13-17 (October 1980). Given these obstacles, the success rates of students attending these institutions was often understandably low.

With the enactment of Section 504, however, numerous colleges and universities began to develop programs to assist in the full integration of qualified handicapped students into the mainstream of campus life. By the Spring of 1978, a survey conducted by Galludet College revealed that at least sixty such programs had been established to provide assistance to hearing-impaired and deaf students. Galludet College, "A Guide to College/ Career Programs for Deaf Students" (1978). Today, while handicapped students continue to be underrepresented at the college level,[4] opportunities for higher education available to these students have greatly improved.

In this section, *amici* present detailed descriptions of several handicapped student support programs presently in existence. The continued operation of these programs demonstrates conclusively that auxiliary aids, as required by 45 C.F.R. § 84.44 (d), can be provided to deaf students in the same situation as the respondent without the imposition of undue financial or administrative burdens upon the institution.

The information presented herein was obtained, in part, through an informal survey of several colleges and

[4] A major survey of college freshmen conducted in September of 1978 revealed that approximately 2.6 percent of all beginning college freshman were physically disabled. The expected prevalence rate for handicapped persons between the ages of 16 and 25 is estimated to be 8.1 percent according to the U. S. Education Department. Of those students who reported that they were handicapped, 10.3 percent cited hearing impairments. President's Committee on Employment of the Handicapped, "The Disabled College Freshman," 1-2 (undated).

universities. Policy statements from a number of these institutions regarding the provision of auxiliary aids to deaf and hearing-impaired students have been included in Appendices A and B. Appendix C includes a letter from the Arkansas Rehabilitation Services Administration detailing that State's policy of providing interpreter services in higher education.

A. Scope of Individual Handicapped Student Services Programs.

Today, many colleges and universities are successfully educating handicapped students with a broad range of physical disabilities. In addition to those students who are deaf or hearing-impaired, many institutions provide services to blind and visually handicapped students, persons with epilepsy and cerebral palsy, and individuals with mobility difficulties. Because of the diversity of this population, it is often difficult to generalize about the specific services and aids that are necessary for the full integration of handicapped students.

Despite this diversity, certain auxiliary aids and services appear to be routinely provided to handicapped students at many colleges and universities. For example, Southern Illinois University provides such services as accessible campus transportation, readers, braille writers, tape recorders and tutoring services. Marquette and Memphis State Universities and the University of North Dakota, as well, provide similar assistance. Additional services noted by several colleges included individualized arrangements for the administration of tests, referral services of accessible housing and attendant services, and availability of taped and large print books.

Of particular significance to the present case are those auxiliary services provided to students who are deaf or otherwise hearing impaired. Depending upon the severity of the impairment as well as the student's level of communication, a wide variety of services are provided to

these students.[5] Accommodations for individuals with hearing disabilities may be as unobtrusive as simply allowing a student with sufficient lipreading skills to sit in the location that best enables him or her to watch the instructor speak. See Appendix A, p. 5a, *infra*. In other instances, deaf students may require the services of manual or oral interpreters. The Disabled Student Services Office at Boston University specifically describes this need for individual consideration:

> Due to the variety of types and severities of hearing impairments, and consequent specific needs, we consult each individual separately who approaches us for some type of service. When we find that a hearing-impaired student validly needs a sign-interpreter for a class, we inform the student of what we believe to be our ethical as well as legislative responsibility for funding the interpreter.

Appendix A, p. 3a, *infra*.

Numerous colleges and universities have similarly described their policies of providing interpreter services at no cost to the individual. As stated by Dr. Joan Austin, Director of the Office for the Disabled at Temple University:

> When you consider the fact that we subsidize athletes, chemistry students, physicians and veterinarians, just to name a few, and that their tuition fees by no means cover the cost of their education it is somewhat embarrassing to think that the issue of "undue hardship" has even been raised when it comes to access to the classroom for deaf students. It is clear

[5] A recent publication describes several types of accommodations that are commonly provided to deaf and hearing-impaired students of higher education including telecommunication devices for deaf persons (TDD's), amplifying phone receivers, hearing aids, and manual and oral interpreters. This guide is intended to provide assistance to college professors in teaching deaf and other handicapped students. President's Committee on Employment of the Handicapped, "The College Student With a Disability: A Faculty Handbook," 7-9 (undated).

> that if a student who has paid his tuition in order to attend classes cannot hear what the professor is saying, there is, in fact, no access to that class. . . . . [I]t seems to me to be very clear that an interpreter is, in fact, the voice of the professor. Students are paying tuition in order to receive instruction . . . . It should not cost a deaf student additional tuition for the same opportunity.

Appendix A, p. 13a, *infra*. See, also, Appendix B, *infra*.

B. Funding for Auxiliary Aids and Services to Handicapped Post-Secondary Students

A broad range of financial assistance programs are generally available to colleges and universities for the purpose of helping these institutions meet their Section 504 obligations. In Section III, *infra, amici* discuss in detail the numerous federal spending programs that can be used for this purpose. On several occasions, state legislatures have provided funds to post-secondary institutions that are earmarked specifically for providing services to disabled students. In Arkansas, for example, the legislature appropriated $48,100 during the fiscal year ending June 30, 1980, for the purpose of providing interpreter services and telecommunications equipment for the use of deaf students in state-supported colleges and universities. Additional funds were appropriated for fiscal year 1981. Appendix C, p. 22a, *infra*.

State vocational rehabilitation agencies are usually the first resource considered when an institution seeks funding to support auxiliary services for handicapped individuals. See Section III B, *infra*. The Director of Services to the Handicapped at Fordham University states, for example, that "our experience has been that most of our hearing impaired or deaf students . . . have funding for such services [interpreters] through the Office of Vocational Rehabilitation and that they pick their own interpreters . . . ." Appendix A, p. 5a, *infra*. This experience has apparently been shared by numerous other colleges and universities in the Pennsylvania and New York areas. An

informal survey of several of those institutions indicated that all would utilize or have utilized funding through state agencies providing vocational rehabilitation services. See, Appendix B (listing colleges and universities contacted and their responses). Several colleges reported that vocational rehabilitation funding has absorbed the total cost of interpreter services.

When federal or state funds are not available, colleges and universities have used their funds creatively to provide interpreter services at minimal cost. For example, the New York State Department of Education provides funding for interpreter services at eight colleges and universities in the New York metropolitan area. In Philadelphia, the University of Pennsylvania utilizes funds from a private foundation to finance interpreter services. Pennsylvania's Edinboro State College has drawn on students trained in sign language to provide communication accessibility to other students. Similarly, Albright College in Reading, Pennsylvania states that should interpreter services be required at the college, it would likely use its own student body to provide such services. Appendix A, p. 2a, *infra*. See, also, discussion of federally funded college work-study program, Section III A 1, *infra*.

While this investigation is by no means comprehensive, it demonstrates that with common sense and innovative thinking, auxiliary aids and accommodations for deaf and other physically handicapped students can be provided by post-secondary institutions in ways that are neither onerous nor offensive.

III.

RECOGNIZING THAT ELIMINATING DISCRIMINATION AGAINST QUALIFIED HANDICAPPED INDIVIDUALS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE MAY IMPOSE CERTAIN BURDENS UPON RECIPIENTS, CONGRESS HAS ENACTED NUMEROUS STATUTES, ESTABLISHED A WIDE VARIETY OF FEDERAL PROGRAMS, AND EARMARKED SUBSTANTIAL AMOUNTS OF FEDERAL DOLLARS TO AID RECIPIENTS IN MEETING THE OBLIGATIONS IMPOSED UPON THEM BY SECTION 504.

The purpose of this section is to describe and discuss the various federal programs that have been designed to aid disabled persons in obtaining the benefits of higher education. The relevance of these programs to the present case is three-fold. Not only does their existence and expansion in recent years represent a continuing commitment on behalf of Congress to achieve the goals set out in Section 504, but these programs are also a large source of financial, administrative, and technical aid to the post-secondary institutions who are required to make their programs accessible to handicapped students. In many of the college and university programs for deaf students described in Section II, *supra,* federal aid is the primary source of funds for continued operation. As such, it is likely that the petitioner could have sought similar federal assistance to provide the respondent the necessary interpreter in the present case.

The availability of these federal funds does much to dispel the University of Texas' argument that the financial cost of providing Mr. Camenisch an interpreter places an unreasonable burden on the University's fiscal operation. (See Brief for Petitioner at p. 10.) As these funding sources appear to have been available to the Petitioner, and, as demonstrated in the preceeding Section, many colleges and universities have utilized these sources to provide auxiliary aids to their handicapped students, the Petitioner does not effectively show that it must bear an unfair burden in this situation.

Finally, insofar as the regulation requiring the University of Texas to provide the respondent a classroom

interpreter, 45 C.F.R. Section 84.44(d) (1979), is challenged in this case, the existence of the federal programs described herein provides support for the decision of HEW to issue Section 84.44(d). As this Court recognized in *Southeastern Community College v. Davis*, the "[i]dentification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped continues to be an important responsibility of HEW." 442 U.S. 397, 413 (1978). It is clear from both the language of Section 84.44 as well as the preamble and appendix to the regulations that HEW carefully weighed the burden to be placed on colleges and universities by Section 504 against the benefits to be obtained from the full integration of qualified handicapped students into post-secondary education programs. The massive federal assistance already being provided to institutions of higher education to support services for handicapped students was clearly one factor used by HEW in measuring the extent of this burden. See 45 C.F.R. Part 84 Appendix A p. 392 (1979).

A. Federal Assistance to Students and Institutions of Higher Education

In 1974, Congress offered the following statement of national policy:

> Recognizing that the Nation's economic, political, and social security requires a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers.

20 U.S.C. § 1221-1 (1978). That this opportunity is to be provided to all persons, especially handicapped individuals, is evidenced by Congress' statement that special emphasis be given to "the adequacy of education at all levels in meeting the special educational needs of such individuals as handicapped persons, . . ." 20 U.S.C. § 1221-1 note (1978). The removal of the financial barriers

to equal educational opportunity has long been among the highest of Congressional concerns. In addition to massive spending programs designed to assist the states in educating pre-school, elementary, and secondary students,[8] numerous federal assistance programs have been established on the post-secondary education level. Many of these programs are related specifically to the education of handicapped persons. Generally, this assistance falls into two categories: direct aid to students and aid to the institutions of higher education.

1. *Federal aid to post-secondary education students*

A major source of financial aid to students of higher education is the college work-study program. Originally established under Sections 441-447 of the Higher Education Act of 1965, as amended, Pub. L. No. 89-329, 79 Stat. 1219, this program is designed to "stimulate and promote the part-time employment of students, particularly students with great financial need, in eligible institutions who are in need of the earnings of such employment to pursue courses of study at such institutions." 42 U.S.C. § 2751(a) (1973). See, generally, *Brown v. Bates,* 363 F. Supp. 897 (N.D. Ohio 1973). The United States Department of Education recently identified this program as a potential resource for post-secondary education institutions that desire assistance in providing auxiliary aids to handicapped students. Specifically, the Department states:

> [s]tudents employed through the College Work-Study Program can provide reader and note-taker services for visually-impaired students and students with manual handicaps. These students, if trained, can provide interpreter services for deaf students, and attendant services for mobility-impaired students.

U.S.E.D. "Auxiliary Aids: A Resource Guide for Postsecondary Schools, Rehabilitation Agencies and Handicapped

[8] See, for example, The Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773, 20 U.S.C. §§ 1401 *et seq.* and The Headstart Program, 42 U.S.C. § 2928 (1973).

Individuals" (Draft, Nov. 20, 1980) (hereafter "Auxiliary Aids"). See also 45 C.F.R. § 175.23 (1979) (Eligible Jobs for College Work-Study Students.) The appropriation for college work-study programs in FY 1979 was $547,023,000 which was distributed to 3,220 postsecondary educational institutions. The figures from FY 1980 are $550,000,000 to 3,300 postsecondary institutions. In 1974, Petitioners received $537,515; in 1975, $550,497; in 1976, $1,112,820; in 1977, $1,239,896; in 1978, $1,285,552; in 1979, $1,620,000 and in 1980, $2,300,000.

Section 417 of the Higher Education Act of 1965 as amended, establishes special federal programs for students from "disadvantaged backgrounds." 20 U.S.C. § 1070d-1 (1978). One of the purposes of the section is to provide supportive and other services to enable physically handicapped students to remain enrolled in and graduate from post-secondary institutions. 20 U.S.C. § 1070d-1(b) (1978). The regulations administering this program define the term "Physically Handicapped Student" as:

> those students who, because of their physical disabilities, need special designed instructional materials or programs, modified physical facilities or related services to participate fully in the experience and opportunities offered by postsecondary institutions.

45 C.F.R. § 157.2(k) (1979). Deafness is particularly mentioned within the list of physical disabilities, thus making this program especially relevant to the case at hand. *Id.*

During 1978-79, Congress appropriated $55.5 million to be given to eligible recipients in the form of grants and contracts under this program. Over 550 such awards were made during this period by the Office of Education. "Auxiliary Aids," *supra.*

In the most recent amendments to this section, Congress makes clear its intent that handicapped people do not need to also be economically disadvantaged in order to obtain the benefits available under this program. In Section 417(d), the Secretary of Education is directed when reviewing applications for projects under this subpart to "require an assurance that not less than ⅔'s of the persons

participating in a proposed project . . . (A) be physically handicapped, *or* (B) be low income individuals who are first generation college students." 20 U.S.C. § 1070d-1 (Supp. 1981) (Emphasis added).

The Basic Educational Opportunity Grant program (BEOG) and the Supplemental Educational Opportunity Grant program (SEOG) represent further sources of federal assistance to students enrolled in institutions of higher education. 20 U.S.C. § 1070a, § 1070b (1978). The grants-in-aid provided to college and university students under these combined programs range from awards of $200 to $1800 per academic year and may be used to absorb a wide variety of the actual costs of attending a post-secondary institution.

Federally funded graduate fellowships are also a large part of the Congressional effort to provide assistance to students enrolled at institutions of higher education. Under section 921 of the Higher Education Act of 1965, entitled "Fellowships for graduate and professional study," Congress authorized such sums as are necessary to provide financial assistance to students doing graduate level work in "fields of importance to the national interest." 20 U.S.C. §§ 1134d-1134h (1978). In awarding these fellowships, Congress directed that priority be given to preparing a "larger number of individuals from minority groups, especially from among such groups who have traditionally been underrepresented in colleges and universities." 20 U.S.C. § 1134d(F) (3) (1978).

Under a second program of graduate fellowships, Congress has directed that priority be given to individuals from disadvantaged backgrounds undertaking graduate or professional study. 20 U.S.C. § 1134n (1978).[7]

The majority of the programs described in this section are administered through individually-located campus financial aid offices. In 1977-1978, these offices provided an estimated 2.8 million post-secondary education stu-

[7] That physically handicapped persons are considered by Congress to be "from disadvantaged backgrounds" is established in 20 U.S.C. 1070d-1 (Supp. 1981).

dents more than 4.2 billion dollars of federal financial assistance. Office of the Inspector General, Department of Health Education and Welfare, "Guide for Audits of National Direct Student Loan Program, College Work-Study Program and Supplemental Educational Opportunity Grants Program," (July 1978). Over 8,000 colleges and universities participated in this activity. *Id.*

2. *Federal aid to institutions of higher education*

In addition to the large sums of federal dollars given in assistance to post-secondary education students, Congress has also earmarked vast amounts of federal funds for use by colleges and universities that can often be used to assist these institutions in providing for the full integration of handicapped students. A federal grants and contracts program is established under Section 404 of the Education Amendments of 1967, Pub. L. No. 90-247, 81 Stat. 783, for the purpose of improving post-secondary educational opportunities by providing assistance to institutions of higher education for "encouraging the reform, innovation, and improvement of post-secondary education, and providing equal educational opportunity for all." 20 U.S.C. § 1221d(a) (1) (1978). In 1974 and each year thereafter, Congress has set aside $75,000,000 for the purpose of implementing this goal. This program has supported many model projects for improving access to and the quality of post-secondary education for handicapped persons. "Auxiliary Aids" at 10.

Understandably, the process of applying for and receiving the grants and contracts described in the subsection can require a certain level of expertise among college and university administrators. Congress has not been insensitive to the bureaucratic problems usually associated with massive federal spending programs. Specifically, Congress has directed the federal Department of Education (and its predecessor, the Office of Education) to provide technical assistance to institutions of higher education which are seeking to obtain federal financial assistance, 20 U.S.C.

§ 1231c (1978). The scope of this assistance is broad — in particular, it includes assistance:

> (1) in determining benefits available to [post-secondary institutions] under Federal law;
> (2) in preparing applications for, and meeting requirements of, applicable programs;
> (3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and,
> (4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

20 U.S.C. § 1231c(a) (1978). Thus, not only is it apparent that Congress has provided funding to colleges and universities that can easily be used to provide interpreter services to deaf individuals, but Congress has also acted to alleviate any unnecessary administrative burden on these institutions. Petitioner's argument that Section 504 imposes undue financial and administrative burdens upon the University fails to consider the aforementioned Congressional action.

B. Federal Rehabilitation Programs for Handicapped Persons

The vocational rehabilitation program has long been viewed by both state and federal officials as a primary source of assistance to disabled students attending institutions of higher education. See Appendix B (survey of New York and Pennsylvania institutions) and Appendix C (letter from Arkansas Rehabilitation Services). In issuing the Section 504 regulations, the current Secretary of HEW stated:

> Under § 84.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities have expressed concern about the costs of compliance with this provision.

> The Department emphasizes that a recipient can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges and universities. . . .

45 C.F.R. Part 84 Appendix A p. 392 (1979). A federal district court has recently ruled under Section 504 that state rehabilitation agencies must provide support services to eligible handicapped persons attending post-secondary institutions. *Jones v. Illinois Department of Rehabilitation Services,* No. 79C5396 (N.D. Ill. January 12, 1981). The National Association of College and University Business Officers' task force on Section 504 has stated that state rehabilitation agencies are often well-equipped to provide auxiliary aids, such as interpreter and reader services, to post-secondary education students. National Association of College and University Business Officers, "Issues and Answers for Implementing Section 504" (undated).

Finally, the federal Rehabilitation Services Administration and the Office of Post-Secondary Education has issued a policy statement offering guidelines to facilitate coordination between colleges, universities, and state rehabilitation agencies. U.S. D.H.E.W. Memorandum, "Development of Cooperative Agreements Between State Vocational Rehabilitation Agencies and States Associations of Student Financial Aid Administrators Concerning Financial Aid and Other Assistance for Handicapped Students Enrolled In Institutions of Postsecondary Education" (June 22, 1979).

The nation's rehabilitation program, through which the federal government pays 80 percent of a State's total costs, is generally administered through designated state rehabilitation agencies. These agencies are required to provide "vocational rehabilitation services" to eligible handicapped individuals throughout the state. Included within the scope of these services as defined by the Act are "interpreter services for deaf individuals." 29 U.S.C. § 723(a)(6)

(1975). In addition, Congress has specified within this same section that services to individuals enrolled in institutions of higher education are to be within the purview of state designated agencies. 29 U.S.C. § 723(3) (1975).

Handicapped individuals are eligible to receive services under this Act if their disability results in a substantial handicap to employment and if they can reasonably be expected to benefit in terms of employment from the services provided. 29 U.S.C. § 706(7) (1975). Although it does not appear as though the respondent in this case was eligible for services under this program as he was already gainfully employed, it can be assumed that, in most instances, handicapped individuals will be eligible for state rehabilitation services.

Within the 1973 revision of the Act, numerous special projects were established to encourage the development of state services for deaf individuals. Many of these special programs can easily be used to supply support services for deaf individuals enrolled in institutions of higher education. In particular, Section 203 of the Act authorized the Secretary of HEW to make grants and contracts with States and organizations "including institutions of higher education, to pay part of the cost of projects . . . designed to assist in increasing the numbers of personnel trained in providing vocational services to handicapped individuals. . . ." 29 U.S.C. § 763(a) (1975). Specifically encouraged were grants to provide a balanced program of assistance to "specialized personnel in providing services to blind and deaf individuals." 29 U.S.C. 763(b) (1975). Under Title II of the Act, federal grants were authorized for special projects to improve rehabilitation services to "deaf individuals whose maximum vocational potential has not been reached." 29 U.S.C. § 774(b)(1) (1975). Funds were also authorized to establish and operate a National Center for Deaf-Blind Youths and Adults. 29 U.S.C. § 775 (1975).

The most recent amendments to the legislation occurred in 1978 with the enactment of the Rehabilitation, Comprehensive Services and Developmental Disabilities Amend-

ments, P.L. 95-602, 92 Stat. 2984. In addition to continuing the programs described above, Congress again paid particular attention to the needs of deaf individuals. Specifically, in Section 204(b) of the Act, Congress authorized the Director of the Institute for Handicapped Research to establish and support "Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of (A) providing training (including graduate training) to assist individuals to more effectively provide rehabilitation services. . . ." Particularly worthy of note in reference to the present case is the statement of Congress that these "grants may include funds for services rendered by such a center to handicapped individuals in connection with such research or training activities." 29 U.S.C. § 762(b)(1) (Supp. 1980).

The most revealing statements of Congressional awareness of the special needs of deaf individuals, however, are found in Title III of the Act. In Section 304(d), Congress authorized the Secretary of HEW to award grants to establish interpreter training programs or to provide financial assistance to on-going interpreter training programs for the purpose of training a sufficient number of interpreters to meet the communication needs of deaf individuals. 29 U.S.C. § 774(d) (Supp. 1980). In Section 305, the Commissioner of Rehabilitation Services is authorized to make grants to state rehabilitation agencies to establish Comprehensive Rehabilitation Centers to provide a broad range of services to handicapped individuals. Of particular relevance is subpart (2) of this section wherein Congress directs that:

> [t]o the maximum extent practicable, such centers shall provide, upon request, to local governmental units and other private nonprofit entities located in the area such information and technical assistance (*including support personnel such as interpreters for the deaf*) as may be necessary to assist those entities in complying with this Act, particularly section 504. [emphasis added]

29 U.S.C. 775(2) (Supp. 1980).

Section 315 of the Act provides additional authorization to the Commissioner of the Rehabilitation Service Administration to make grants to state rehabilitation agencies to:

> establish within each State a program of interpreter services . . . which shall be made available to deaf individuals and to any public agency or private nonprofit organization involved in the delivery of assistance or services to deaf individuals.

29 U.S.C. § 777e (Supp. 1980). This program is particularly designed for an individual in the situation of the plaintiff who appears to be ineligible for traditional state rehabilitation services. Congress directs in subpart (d) of Section 315, that funds provided to a State agency "for any program under the section shall not be used . . . for assistance to deaf individuals who are receiving rehabilitation services under any other provision of this Act." 29 U.S.C. § 777e(d) (Supp. 1980). Thus, by placing such a limitation on the expenditure of funds under this provision, Congress acted with the clear intention of expanding the number of deaf individuals provided services under the Act.

The addition of communication barriers to the list of environmental barriers placed under the purview of the Architectural and Transportation Barriers Compliance Board is further evidence of Congressional intent to bring deaf persons into the mainstream of daily life.[8] Federal assistance was provided under Section 506 (1) whereby the Secretary of HEW, in conjunction with the Architectural and Transportation Barriers Compliance Board, was authorized to provide financial and technical aid "to any public or nonprofit agency, institution, or organization for

[8] Created in 1973, the Board's primary original function was to enforce the requirements of the Architectural Barriers Act of 1968. In 1978, the authority and responsibility of the Board was increased greatly. In particular, the Board was given authority to "investigate and examine alternative approaches to architectural, transportational, *communication* and attitudinal *barriers* confronting handicapped individuals". 29 U.S.C. § 792 (Supp. 1980).

the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers." 29 U.S.C. § 794b (Supp. 1980).

The acute Congressional sensitivity to the needs of deaf individuals, as reflected in the 1978 amendments, is perhaps best explained by this statement of Representative Jeffords:

> During the past year our understanding and awareness of the deaf and their problems have grown because we have had a man who is totally deaf working part-time on our staff on the Education and Labor Committee. . . . Having [a deaf person] working for Congress made not only members, but staff, very aware of the deaf and much more aware of their capacities as well as their needs. . . . Because of [him], many people have learned how to sign, hearing people who had no prior contact with the deaf are now objective, understanding, and at ease with him.
>
> Having a deaf person in the office makes you aware of the problems that they face first hand. . . . We know that without an interpreter he cannot attend meetings.
>
> 124 Cong. Rec. H3969 (May 16, 1978) (statements of Rep. Jeffords).

C. Federal Program for the Assistance of Persons with Developmental Disabilities

Although the legislative predecessors to the present Developmental Disabilities Assistance and Bill of Rights Act (hereinafter The D.D. Act), 42 U.S.C. § 6000 *et. seq.* (Supp. 1980), focused upon the provision of services to only mentally retarded persons or individuals with neurological disorders such as epilepsy or cerebral palsy, the 1978 amendments to the D.D. Act substantially broadened the definition of developmental disability and, therefore, significantly enlarged the class of handicapped persons intended to be served under the legislation.

42 U.S.C. § 6001(7) (Supp. 1980). Given this expanded definition, many more handicapped persons, including certain deaf individuals, are now eligible for services under the federal-state developmental disabilities programs.

This program has long been viewed as a "gap-filling" measure by both Congress and service providers, thus, making it particularly important in the situation that has arisen in the present case. See 124 Cong. Rec. S 1556 (remarks of Sen. Stafford). In particular, Congress states that one of the specific purposes of the statute is "to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs cannot be covered or otherwise met under the Education of All Handicapped Children Act, the Rehabilitation Act of 1973, or other health, education or welfare programs; . . ." 42 U.S.C. § 6000(2)(A) (Supp. 1980).

Recently, in *Henkin v. Department of Social Services*, 498 F. Supp. 659 (D.S.D. 1980), a federal district court ruled that the developmentally disabled plaintiff was eligible to have her educational program funded through the state's developmental disabilities program. Specifically, the judge cited the wide variety of programs eligible for funding under the D.D. Act. 498 F. Supp. at 667. In *Henkin*, as in the present case, the plaintiff was ineligible for services under the state rehabilitation program. Educational services, as provided in *Henkin* and as sought in this case, are clearly within the scope of programs that can be funded with D.D. Act monies. 42 U.S.C. § 6001(8) (Supp. 1980).

D. Federal Programs to Assist in the Training of Educational Personnel

A fourth source of federal financial assistance that appears to have been available in the present case to help the University of Texas defray the cost of providing an interpreter to the respondent is several federal programs

designed to support the education of teachers and educational administrators.[9] While these programs have not been created for the express purpose of helping handicapped persons they are particularly relevant to the facts of this case, given the respondent's occupation as the Dean of the Texas School for the Deaf.

Two federal teacher training programs are established under the Higher Education Act of 1965, as amended. The Teacher Training Corp., 20 U.S.C. §§ 1101-1107a (1978), is a unique program through which colleges and universities are encouraged to broaden their programs for training teachers and other educational personnel. Substantial federal funds are allotted to support both the students and teachers enrolled in this program.

The second program established under the Higher Education Act is the Teacher Training Program, 20 U.S.C. § 1119-1119a-1 (1978). Under this enactment, federal grants are awarded to institutions of higher education for the purpose of training individuals to become teachers and administrators. Special emphasis is placed upon the training of teachers to serve educationally disadvantaged children.

[9] Additional assistance is available from a federal loan program, entitled "Direct Loans to Students in Institutions of Higher Education," to be operated for the purpose of "stimulating and assisting in the establishment and maintenance of funds at institutions of higher education for the making of low interest loans to students in need thereof to pursue, their courses of study in such institutions." 20 U.S.C. § 1087aa (Supp. 1980). During the years 1977 and 1978, Congress authorized $1.2 billion for the purpose of making loans under this section. Of particular notice in the present case is a provision for the cancellation of loans issued under this section for certain public service activities — namely, a recipient of such a loan may void his repayment obligations by working a total of five years as a full-time teacher of handicapped children. Under this provision, "handicapped children" are defined as "children who are mentally retarded, hard of hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed or other health-impaired children who by reason thereof require special education." 20 U.S.C. § 1087ee (Supp. 1980).

A third federal funding source to assist in the preparation of educational personnel is directly relevant to the facts as presented in this case. Under the Education Amendments of 1969, P.L. 91-230, 84 Stat. 121, a federal program was established to train personnel for the education of handicapped children. 20 U.S.C. § 1431 (1978). By the operation of this provision, federal funds are available to colleges and universities to assist them "in providing training for personnel engaged or preparing to engage in employment as teachers of handicapped children, as supervisors of such children, or as speech corrections or other special personnel. . . ." 20 U.S.C. § 1431(2) (1978). Given the respondent's employment as the Dean of the Texas School for the Deaf, it appears clear that funds received by the University under this section[10] could have easily been used to supply an interpreter to the plaintiff.

E. In Those Instances Where A Disabled Student Or A College Or University Is Ineligible To Participate In The Federal Assistance Programs Described In This Section, The Ultimate Responsibility For The Provision Of Necessary Auxiliary Aids Falls Upon The Post-Secondary Institution Receiving Federal Financial Assistance.

In enacting Section 504, Congress has, in effect, set certain terms for the disbursement of federal dollars. The power of Congress to impose conditions upon the use of federal funds has long been recognized. See *Oklahoma v. Civil Service Commission,* 330 U.S. 127 (1947) and *King v. Smith,* 392 U.S. 309 (1968). In issuing regulations to implement Section 504, HEW has acted properly to ensure

[10] In November of 1976, the Special Education Department of the University of Texas apparently received substantial funds under this program. During the Respondent's enrollment at the University, this grant was continued. U.S. Office of Education, Grant and Procurement Report, 115 (March 13, 1978).

that these Congressionally-established conditions are not violated by federal fund recipients.[11]

Throughout the nation, colleges and universities have willingly accepted their responsibilities under Section 504 and its regulations. The successes experienced by these institutions conclusively demonstrate that compliance with the regulation at stake in this case, 45 C.F.R. § 84.44(d) (1980), can be accomplished without imposition of undue financial or administrative burdens upon recipients.

The flexibility and reasonableness with which the Section 504 regulations have been drafted has been recognized by the National Association of College and University Business Officers:

> All institutions of higher education should achieve accessibility in their programs and activities. . . . Institutions are encouraged to take full advantage of the flexibility that exists within the Section 504 requirements and to exercise common sense and reasonableness in arriving upon effective approaches to Section 504 compliance. . . .
>
> Institutions are encouraged to remember that accessibility is a process and not a set of arbitrary

[11] As a condition of receiving any federal financial assistance from HEW, applicants for federal funding are required to execute and file an Assurance of Compliance Form with the agency, 45 C.F.R. § 84.5 (1980). This form states that the recipient agrees to comply with Section 504 and the HEW regulations.

In the present case, it was stipulated that the University received some $31,400,000.00 in federal financial assistance. As noted above, "in consideration of and for the purpose of obtaining" this financial assistance, the University contractually assured its compliance with the statute and regulations here at issue. These HEW regulations are certainly specific enough to have put the University on notice of the undertaking to provide auxiliary aids to otherwise qualified handicapped individuals. 45 C.F.R. § 84.44(d) (1979). Thus, the University was clearly bound to provide Camenisch with an interpreter. See *Lau v. Nichols*, 414 U.S. at 568-69. *See generally* R. Cappalli, *Rights and Remedies Under Federal Grants* 28-34, 53-71 (1979).

> requirements. To the extent that institutions develop and implement flexible and effective response mechanisms, they will make major progress toward meeting effectively the needs and requirements of handicapped persons for accessible programs, activities, and services.

National Association of College and University Business Officers, "Issues and Answers for Implementing Section 504" (undated).

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

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January 28, 1981

APPENDIX A

LETTERS FROM COLLEGES AND UNIVERSITIES DESCRIBING POLICY ON PROVISION OF INTERPRETER SERVICES TO DEAF AND HEARING-IMPAIRED STUDENTS

ALBRIGHT COLLEGE

January 7, 1981

Leigh Redmon
1700 Walnut Street, Suite 525
Philadelphia, PA 79106

Dear Mr. Redmon:

You requested information regarding Albright College's policy and procedures in providing services to handicapped students, particularly deaf students. I am pleased to reply to your request; however, at the present time we do not have any deaf students enrolled, nor have we had any since I have been working with such services. We have had students with other types of handicaps and have been able to accommodate those students.

For our blind students we provide student readers who are paid by the Bureau of the Visually Handicapped, Department of Public Welfare, Commonwealth of Pennsylvania. Faculty and staff are very cooperative in assisting these students. We have had a number of blind students through the years and the feedback from them is very positive.

Albright has made various structural changes and is continuing to improve access to buildings for disabled students. Ramps have been added to entrances and an elevator was installed during renovation of a building; plus other elevators will be incorporated into changes in other buildings.

Not having had deaf students it is difficult to predict all the services needed; however, the use of interpreters would be necessary. Currently several of our students are taking sign language and thus a group like this would provide a resource. As to the funding for interpreters, that has not been defined and would have to be discussed with the appropriate persons.

In my opinion Albright is concerned about its handicapped students and will try to provide all the services necessary for such students to fully function on a college campus.

I enjoyed talking with you and wish you the best in 1981.

Sincerely,

Virginia L. Scullion
Associate Dean of Students

VLS/jb

Boston University

January 7, 1981

Mr. Andrew Penn, Staff Attorney
National Association of the Deaf
Legal Defense Fund
Seventh Street and Florida Avenue, N.E.
Washington, D.C. 20002

Re: *Interpreter Policy Statement of Boston University*

To Whom It May Concern:

As requested, I am offering a factual accounting of the current policy of Boston University regarding providing sign-interpreters for students with severe hearing impairments.

Disabled Student Services (DSS) is a department of Student Life which coordinates the University's long-standing commitment to a mainstreamed participation of disabled students, staff, and faculty in our full campus life.

This ethical commitment was active before the enactment of legislative accessibility requirements of Section 504 of the 1973 Vocational Rehabilitation Act.

At this date approximately six hearing-impaired students, plus one instructor, have identified themselves for currently needing the optional services of DSS. Due to the variety of types and severities of hearing impairments, and consequent specific needs, we consult with each individual separately who approaches us for some type of service. When we find that a hearing-impaired student validly needs a sign-interpreter for a class, we inform the student of what we believe to be our ethical as well as legislative responsibility for funding the interpreter.

Ethically, we believe that all tuition-paying students have the same right of access to academic programs; for the hearing-impaired student in some cases this means the auxiliary provision of an interpreter. Our ethical concerns also extend beyond the classroom, as evidenced by the policy of our Student Activities Office of supplying an interpreter on request for the special lecture series it sponsors.

Legislatively, we find that our previous ethical stance is backed by regulations of compliance to Section 504. In the May 4, 1977 *Federal Register,* commentary pages 22692-3, we find that colleges have the ultimate responsibility for auxiliary aid funding, where the request is validly an institutional responsibility, if it can't be funded elsewhere.

The University has had to fund all valid interpreter needs for which the impaired individual hasn't volunteered personal resources. For FY 79/80, the University spent about $1,500 for interpreter services at an average of $15 per hour for R.I.D. Certified interpreters. This was the third year that we had actually received interpreter requests relating to our long-standing commitment. We expect that our expenditure will increase each year as we hope more hearing-impaired students will come to our campus through our active recruiting program. Certainly

our ethical commitment will continue, regardless of any future reductions of legislative requirements, should they occur for some reason.

Respectfully,

ALFRED H. DE GRAFF
Director

AHD/mv
cc: Henry Beyer, Associate Director
Center for Law and Health Sciences
Boston University

Delaware County Community College

January 7, 1981

Mr. Andy Lehr
Southeast Legal Service for the Deaf
1700 Walnut Street — Suite 525
Philadelphia, PA 19103

Dear Mr. Lehr:

It is the policy of Delaware County Community College to provide certified interpreters in our classes. In addition, we would provide interpreters for other campus activities on an as needed basis.

Very truly yours,

ART SMITH
Coordinator
Services for the Disabled

/d

FORDHAM UNIVERSITY

January 8, 1981

Andrew G. Lehr, Esquire
Southeastern Pennsylvania Legal Services for the Deaf
Suit 525 — 1700 Walnut Street
Philadelphia, Pennsylvania 19103

Dear Sir:

We have not been called upon in the three years of my tenure as Director of Special Services to provide interpreters for any deaf students. We would do so if requested, but our experience has been that most of our hearing impaired or deaf students read lips and can be accommodated with special seating arrangements or they have funding for such services through the Office of Vocational Rehabilitation and pick their own interpretors. If such services were needed funding for it would come out of my budget for special services for the Handicapped.

We currently have 10 hearing impaired students and no deaf students. I am enclosing an article from the recent Time that may be of interest.

Sincerely,
GLENDA U. PALMER,
Director of Services
to the Handicapped.
Fordham University

GUP/lg

New York University

January 14, 1981

Andrew G. Lehr, Esquire
Southeastern Pennsylvania
Legal Services for the Deaf
1700 Walnut Street, Suite 252-1700
Philadelphia, PA 19103

Dear Mr. Lehr,

In response to your questions regarding provision of interpreters, I am providing the following information.

New York University has provided sign language (and now also oral) interpreters for several years. Initially, special endowment monies were used for selected students while other were required to arrange for interpreter services through New York State Office of Vocational Rehabilitation.

For the past two years, NYU has relied on its own resources for financing the interpreter service (where possible, we attempt to recover some expenses from Vocational Rehabilitation). Any hearing impaired student or professor attending an NYU function is eligible for interpreter services.

In July 1980, NYU established the position of Programs Coordinator (in the Office of Disabled Student Services) to administer the interpreter services. The Coordinator's salary is paid from NYU "hard" money. The individual Schools and Departments where interpreters are assigned are billed for the costs of the interpreter services.

The provision of interpreter services and creation of the Coordinator's position were both recommended by the University's President's Committee on 504 (the committee is chaired by the Vice President for Administrative and Student Services). The committee found interpreter services to be a necessary auxiliary aide for compliance with 504. The Coordinator's position was adopted to insure a high quality of delivery of services.

I am enclosing a copy of our policy on interpreter services along with our Student Handbook. The 33 hearing impaired students are the largest identifiable disability group on campus. Last semester we employed thirty freelance interpreters for fifty-three courses (139 hours of interpreting per week) for twenty-six students. The interpreters are paid ten to thirteen dollars per hour. The number of students has risen steadily over the last three years as more students learn about our services.

As for other institutions providing interpreter services, please note the following:

LaGuardia Community College of the City of New York
31 — 10 Thomson Avenue
Long Island City, NY 11101
ATT: Margaret Ranson
(212) 626-2705

Northeastern University, Boston

Long Island University, Brooklyn Center
Flatbush Avenue Extention
Brooklyn, NY 11201
ATT: Natalie Siegelstein, Special Ed. Services

Please feel free to contact me if I can be of further assistance. You may rely on our support in the Camenisch case. Thank you.

Sincerely,

Aron Teel
Programs Coordinator

In order to expedite this letter we are sending the student handbook under a separate cover.

Thank you.

Enc: 2
AT/go

NEW YORK UNIVERSITY POLICY ON INTERPRETER SERVICES

PURPOSE:

New York University, in accordance with Federal regulations, insures that interpreter services are provided for hearing impaired students and faculty. Requests made by hearing impaired students or faculty, or by an office of the University foreseeing a need for interpreter services, are coordinated by the Office of Disabled Student Services (Loeb Student Center, 566 LaGuardia Place, room 701, New York, NY 10012; 598-3320, voice and TTY). The contact person for this service is the Programs Coordinator. The policies and procedures outlined below are provided as a guide for persons providing interpreter services.

RESPONSIBILITIES:

It is the responsibility of feelance interpreters to provide interpreter services for classes and meetings as assigned by the Coordinator, including:

—to convey the message of one speaker to another in the mode of communication preferred by the receiver (Spoken English, Signed English, American Sign Language or Visible English);

—to prepare for each assignment in advance including familiarizing himself/herself with the subject matter and assessing that his/her skills are sufficient;

—an integral part of an assignment is to arrive before the class (or meeting) begins (to meet the principal parties, explain the interpreter's role, insure proper seating and lighting, prepare for movies or other special situations), and to remain at the end of the session for any additional communication between parties (e.g., questions to the professor, feedback to the interpreter);

—to present himself/herself as a professional in appearance and dress;

—to comply with the interpreter's code of ethics (see attached).

Note: The Coordinator is available for purposes of observation.

POLICIES:

1. All assignments are made by the Coordinator. Assignments will be based upon:

—specific skill requirements (communication mode, course content, etc.)

—certification of the interpreter

—dependability and professional attitude/conduct

—performance evaluation

—years of experience

—specific student requests

2. Each interpreter is expected to seek a meeting with the class professor and the hearing impaired student(s) during the first week of class. The meeting will allow for the interpreter to:

—explain his/her role

—clarify the mode of communication to be used

—make special requests (e.g., lighting, seating)

—respond to questions of either party

—request for breaks depending on the type and length of the class

Up to one hour of time (per class) may be billed for these meetings with prior approval of the Coordinator.

3. Cancellations

—one session assignment: An attempt will be made to notify an interpreter at least two working days in advance of any cancellation. Should this not be possible, the interpreter will be paid for the one session assignment.

—full course assignment (Fall and Spring): An attempt will be made to notify an interpreter at least one week in advance of any cancellation. Should this not be possible, the interpreter will be paid for one week's assignment.

NOTE: Cancellations are those instances when a student drops or the University cancels the course.

4. Interpreters are required to report any changes of course hours or rooms to the Coordinator *immediately*.

5. In cases of illness or emergencies, interpreters should contact the Coordinator to arrange for substitutes. When possible, substitution requests should be made at least two full working days in advance of the assignment.

6. For assignments where the hearing impaired person is not present at the beginning of a session, the interpreter should remain fifteen minutes for a one hour assignment and thirty minutes for longer assignments. Inform the Coordinator as soon as possible.

7. Interpreters are responsible for ascertaining at least two weeks prior to the final exam whether their services will be needed. Be sure to discuss the date, time and room in conjunction with the student(s) and instructor. In those cases when an interpreter is present only for beginning instructions, one hour of time may be billed.

8. An evaluation form will be provided each student and instructor near the end of the semester.

9. The Coordinator will evaluate, i.e. observations, as necessary.

COMPENSATION:

1. All interpreters are paid on an hourly basis.

2. The regular hourly rate of pay is $10.00. Interpreters certified by the National Registry of Interpreters for the Deaf (R.I.D.) will receive an hourly rate of pay of $13.00.

3. All applicable taxes including Federal, State, City and F.I.C.A. will be deducted from pay checks.

4. No reimbursement will be made for travel time for assignments.

5. In general, time sheets will be turned in to the Coordinator for approval and processing *every two weeks*. A schedule of dates is available from the Coordinator.

NOTE: Special photo ID cards are available to those interpreters regularly assigned.

PROBLEM RESOLUTION:

Interpreters should make every effort to resolve problems in a professional manner with the individuals involved (e.g., the hearing impaired student, faculty member). In the event the problem is not resolved, the Coordinator and/or Manager is available for advice and consultation.

QUEENS COLLEGE

January 13, 1981

Mr. Andrew G. Lehr, Esquire
Southeastern Pennsylvania Legal Services for the Deaf
Suite 525 — 1700 Walnut Street
Philadelphia, Pennsylvania 19103

Dear Mr. Lehr,

In response to your letter of inquiry on services provided to deaf students, the following is the process we have used thus far:

Deaf students are referred to the Office of Vocational Rehabilitation, who generally pays for the interpreter needs of full time under graduates.

Recently a part time student was denied our sponsorship because he was already employed. The college has been paying for this student with school funds, as is required by federal law. If the student did not suggest an interpreter we would contact the N.Y. society for the deaf for this service.

The interpreter is paid per hour on a monthly basis. Checks are issued by the business office.

There is no written policy regarding interpreters. Policy on compliance with federal regulations is printed in school bulletins and catalogs.

We currently have four deaf students enrolled in classes. We have had an average of two students per year in the past. Until this point all of our students were sponsored by O.U.R.

Deaf students are entitled to all services provided by my office. I am the campus coordinator who provides or coordinates these services.

LaGuardia Community College has full range services for deaf students.

If you require further information please feel free to call.

Sincerely,

Gail Uellendahl

TEMPLE UNIVERSITY

January 7, 1981

Mr. Andy Lehr
Southeastern Pennsylvania Legal Services for the Deaf
1700 Walnut Street
Philadelphia, Pa. 19107

Dear Mr. Lehr:

I understand that you are preparing the brief in the case of "Camenisch v. the University of Texas". I would like to have the opportunity to add a comment since we at Temple University feel very strongly in regard to this matter of providing interpreters for the classroom at no cost to the deaf student. We have been providing and paying for interpreters in the classroom for the past three years and I can certainly attest to the fact that it has not been a hardship for Temple Univerity.

Although there is a large deaf community in Philadelphia, the numbers of profoundly deaf individuals who require interpreters who are able to attend postsecondary institutions will always be relatively small because of their language deficit. It has cost us from two to six thousand dollars per year. We pay for interpreters in the classroom for any full or part time student or for anyone who is taking a workshop for which he is paid a fee. When you consider the fact that we subsidize athletes, chemistry students, physicians, and veterinarians, just to name a few, and that their tuition fees by no means cover the cost of their education, it is somewhat embarrassing to think that the issue of "undue hardship" has even been raised when it comes to providing access to the classroom for deaf students. It is clear that if a student who has paid his tuition in order to attend classes cannot hear what the professor is saying there is, in fact, no access to that class. Although physical and programmatic access for the blind and mobility impaired is somewhat unclear as to scope and is open to a little more individual interpretation, it seems to me to be very clear that an interpreter is, in fact, the voice of the professor. Students are paying tuition in order to receive instruction and the benefit of his expertise and training. It should not cost a deaf student additional tuition for the same opportunity.

Again, may I remind you that we are never talking about large numbers since most deaf students, however intelligent, simply do not have sufficient facility of the language. Those who do should not be further penalized. Temple University is constantly struggling with finances, more so than some other major universities. But the legal and ethical perogatives here seem abundantly clear to us. Should it prove necessary or helpful I would be most happy to testify in this case.

Sincerely,

Dr. Joan Austin
Director,
Office for the Disabled

JA/lf

WASHINGTON UNIVERSITY IN ST. LOUIS

January 19, 1981

Patrick P. Spicer
Developmental Disabilities Law Project
University of Maryland Law School
500 West Baltimore Street
Baltimore, MD 21201

Dear Mr. Spicer:

In connection with your legal efforts related to services for deaf students, I would like to give you some information about our services.

1. Our general policy is to provide such services that are necessary to permit a qualified student to take part in our academic programs. This does not include services of a strictly personal nature (personal care, non-class-related readers, etc.).

2. We have, to date, had no deaf students requiring a sign language interpreter. We have, however, provided an interpreter for a deaf alumnus attending a lecture series in Fine Arts. The usual charge in our area is $10-$15 an hour, plus one-way transportation.

3. Deaf students who lip read have been provided such services as arranging a class schedule with professors most easily "read", arranging for classmates to make duplicate notes, conferring with instructors, etc. No major sums of money have been needed, to date.

4. We have discussed the financial burden an interpreter would be and how this could be handled by a private university like ours, with limited resources. We would explore other sources — vocational rehabilitation, foundations, organizations, etc., as well as the student's own ability to pay. We have also discussed the possibility of teaching students sign language so that they could be used, if needed, and paid through work-study funds. Volunteers would also be welcomed.

I hope this will be of some usefulness to you. Please call or write if I can be of any assistance.

Sincerely,

HAZEL Z. SPRANDEL, PH.D.
Coordinator for the Handicapped

APPENDIX B

SURVEY OF COLLEGES AND UNIVERSITIES IN PENNSYLVANIA AND NEW YORK CONCERNING THEIR POLICIES ON THE PROVISION OF INTERPRETER SERVICES TO DEAF AND HEARING-IMPARIED STUDENTS

COLLEGES AND UNIVERSITIES IN NEW YORK AND PENNSYLVANIA AND INTERPRETER SERVICES

Community College of Philadelphia
Philadelphia, Pennsylvania

> The College has initiated a program of services to handicapped individuals to help overcome barriers to obtaining an education. Services include interpreters for deaf students; volunteer notetakers; readers for visually impaired students; mobility aides; cassette records on loan. Other special services can be arranged on an individual need basis.

Student Handbook at 9.

The Community College of Philadelphia has approximately twenty deaf students. Interpreters for the majority of these students are funded through the state vocational rehabilitation program. The remainder are financed through the College's budget.

Edinboro State College

Edinboro, Pennsylvania

Edinboro State College currently has no deaf or hearing-impaired students. If however, a student was in need of an interpreter, and no other resource, such as state vocational rehabilitation or a private agency were available, the services would be provided through the college's budget.

Edinboro has served deaf students in the past. Since the college is located in a remote region of northwest Pennsylvania and the nearest interpreter referral service is located in Pittsburgh, over one-hundred miles away, students versed in sign language were hired on the student payroll to serve as interpreters.

Delaware County Community College
Media, Pennsylvania

Delaware County Community College provides certified interpreters to those who need them to attend classes. In addition, the College provides interpreters for other activities as needed.

Temple University
Philadelphia, Pennsylvania

Temple University has a uniform policy of providing equal access to the classroom for all handicapped students, including the deaf and hearing-impaired. Any student, whether full or part-time, is provided an interpreter for classroom use. The interpreter is considered to be an arm of the instructor. The University presently has eight full-time and six part-time hearing-impaired students. Interpreters are funded by the University through its development fund.

Drexel University
Philadelphia, Pennsylvania

Drexel University provides interpreters to students as part of its compliance with Section 504 of the Rehabilitation Act. Interpreters are paid by the university as a part

of its budget for handicapped students and is not reflected in the costs of the tuition paid by the deaf student.

University of Pennsylvania
Philadelphia, Pennsylvania

The University of Pennsylvania provides interpreters at the request of hearing-impaired students, although they have no such students enrolled presently. The cost of these services is absorbed by the University, although students are urged to obtain as much outside aid as possible, through vocational rehabilitation funding. The University currently has a private foundation grant to fund the costs of interpreter services not covered by outside sources. When this private money is exhausted, the University will assume the responsibility of payment for interpreter services.

Albright College
Reading, Pennsylvania

Albright College, while it has not had deaf students specifically, has developed a policy of adjusting programs, services and activities to accommodate the handicapped. If necessary, the College will pay for such services at its expense, although state vocational rehabiliation aid would be sought. as it has been effectively used to pay for readers for blind students enrolled at Albright.

LaGuardia College — City College of New York
New York, New York

LaGuardia College, a two-year community college, which is part of the city college system, provides interpreters for deaf students and pays for such services if necessary. A total of ten deaf students are currently enrolled who require interpreters, but all have been eligible for state vocational rehabilitation funding for interpreter services.

The College also administers a program under Title I of the New York State Department of Education to provide

access to continuing education for deaf students. This program includes funding for interpreters and is operated through the LaGuardia College Programs for Deaf Adults. While this program is part of the Continuing Education office, it also provides funding for interpreters in other educational programs at the twelve participating institutions.

Hofstra University
Hempstead, New York

While Hofstra University currently has two hearing impaired students, no student has been in need of interpreter services to date.

State University of New York, College of Arts & Sciences Geneseo, New York

The State University of New York's College of Arts and Sciences has about four hearing-impaired students. All the students needing interpreter services have been funded through the state office of vocational rehabilitation.

Widener College
Chester, Pennsylvania

The Student Affairs Office of Widener College would provide interpreters for deaf students as the need arises. While Widener has no deaf students at this time, it will continue its policy of accommodating handicapped students. In the event a deaf student requires an interpreter, the student must seek the service through the state vocational rehabilitation program. If the student is not eligible for these services, the college will provide an interpreter at its own expense.

Bucks County Community College
Doylestown, Pennsylvania

Bucks County Community College provides and pays for interpreters for deaf students who request them. The interpreters are paid for by means of a line item in the budget. The College has had a maximum of three to four

students per semester. Some have not requested interpreter services.

Montgomery County Community College
Blue Bell, Pennsylvania

Montgomery County Community College will furnish interpreters to deaf students. The college has one deaf student presently, who has not requested an interpreter.

State University of New York, College at Brockport
Brockport, New York

The State University of New York's College at Brockport will pay for an interpreter service if an individual is not covered by the state vocational rehabilitation agency. The College at Brockport currently has three deaf students enrolled.

Fordham University
Bronx, New York

Fordham University has not yet been asked to provide an interpreter for deaf students. The University reported that the needs of its deaf and hearing-impaired students have been met, to date, by special seating to permit speech reading or by use of interpreters funded through the state vocational rehabilitation program. The University's budget includes special services for the handicapped which would absorb the cost of interpreters. Fordham has ten hearing impaired students enrolled at this time.

Queens College of the City University of New York
Flushing, New York

Queens College currently has four deaf students, and has averaged two deaf students per year in the past. Until this year the College was not faced with the question of payment of interpreters, as all the services needed by deaf people were paid for through the state vocational rehabilitation agency. This year, when a student was denied this funding, the College absorbed the costs of the interpreter services.

New York University
New York, New York

New York University provides and pays for interpreters for deaf students by means of the college budget. The University has had a steady increase in the number of deaf students enrolled, from about fifteen in 1978 to thirty in 1980.

The University does not view the costs of interpreter services as excessive for a large institution such as N.Y.U. and that it has not suffered undue costs or problems as a result of its program.

AFFIDAVIT

I, Andrew G. Lehr, hereby affirm that the foregoing information is accurate to the best of my information, knowledge, and belief, under penalty of perjury.

ANDREW G. LEHR
Staff Attorney
Southeastern Pennsylvania
Legal Services for the Deaf
Suite 525
1700 Walnut Street
Philadelphia, PA 19103

Arkansas Department of Human Services

APPENDIX C

STATEMENT OF POLICY OF ARKANSAS DEPARTMENT OF HUMAN SERVICES, DIVISION OF REHABILITATION SERVICES, CONCERNING THE PROVISION OF INTERPRETER SERVICES TO DEAF AND HEARING-IMPAIRED STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION.

December 18, 1980

Andy Penn
National Center for the
Law and Deaf
7th and Florida Avenue, N.E.
Washington, D.C. 20201

Dear Mr. Penn:

I am enclosing a copy of a letter from our Commissioner, E. Russell Baxter, to the Presidents of state supported colleges and universities. I am also enclosing Program Instructions from RSA on "Interim Policy Statement on the Provision by VR Agencies of Educational Auxiliary Aids for Handicapped Students in Postsecondary Educational Institutions As Related to Section 504 of the Rehabilitation Act."

Our two years of experience with that special fund provided by the State Legislature has been very positive. For the first time, we've actually had large numbers of deaf students remaining in the State for college training. The same request will be made for the next biennium.

RSA continues to study State Agencies' responsibilities regarding payment for interpreters in postsecondary edu-

cational institutions. You may wish to contact Martin Spickler in the RSA Office for more information.

Please let me know if I can provide additional information.

Yours very truly,

GLORIA KEMP, Deputy Commissioner
REHABILITATION SERVICES — OFFICE
FOR THE DEAF AND HEARING IMPAIRED

GK/da
cc: E. Russell Baxter
Martin Spickler

STATE OF ARKANSAS
DEPARTMENT OF HUMAN SERVICES

August 17, 1979

Dear

In order to assist state supported colleges and universities in carrying out their responsibility to provide access to educational information to students who are deaf or severely hearing impaired or who are blind or severely visually handicapped, the Legislature included a special provision in the current Appropriation Act to the Division of Vocational Rehabilitation. For the fiscal year ending June 30, 1980, $48,100 was appropriated for providing telecommunication equipment for the use of deaf students for each state supported college and university and for providing interpreter services to approximately eight deaf students. For the same period, $52,500 was appropriated to establish a resource center for the use of the blind students at each state supported college and university and for providing reader services to approximately ten blind students. For the fiscal year ending June 30, 1981, $59,450 was appropriated to provide interpreter services for approximately ten deaf students and provide reader services to approximately ten blind students. Since 5% of the current year's appropriation has been impounded, the

total sum currently available for disbursement prior to June 30, 1980, is $95,570.

Any state supported college or university desiring assistance under this program should make application to me by letter indicating (1) the type and cost of equipment desired; (2) the arrangements which will be made for the use of the equipment to assure its accessibility and preservation; and (3) the number of deaf and hearing impaired persons and the number of blind and severely visually handicapped students currently enrolled and the number of students anticipated for the remainder of the fiscal year. The letter of application should also indicate by students the number of hours and the cost for interpreter services for the deaf and reader services for the blind.

It is important to note that the funds provided in this appropriation may be used for providing interpreter services and reader services only for students who are not presently clients of the Vocational Rehabilitation Program. The cost of interpreter and reading services for these clients will be met by this agency as a direct case service cost.

When a letter of application has been received providing the necessary information, a letter of authorization will be issued. After the equipment has been purchased or the interpreter or reader service provided, proof of payment should be submitted to my office and the college or university will be promptly reimbursed in accordance with the authorization and expenditure report. The college or university may collect quarterly for interpreter and reader services.

Initially, funds available for the purchase of telecommunication equipment for the deaf and resource center equipment for the blind such as video magnifiers, braille writers, and tape recorders will be tentatively apportioned among 19 state supported colleges and universities on an equal basis, i.e. $2,550 per school. If any college or

university does not wish to participate in the program or wish a smaller sum, the savings thus accomplished can be made available to colleges and universities wishing additional appropriate equipment. Funds for interpreter services and reader services will be approved on an individual student basis until available funds are exhausted.

The staff of the Office for the Deaf and Hearing Impaired and our Office for the Blind and Visually Impaired will be available to provide you with consultation and assistance in the preparation of your request for equipment and in the recruitment of interpreters. If you need assistance for information concerning interpreter services or equipment for deaf students, contact Gloria Kemp, Deputy Commissioner, Office for the Deaf and Hearing Impaired at 371-2502. For information concerning equipment or reader services for the blind students, contact Lou Rives, Deputy Commissioner, Office for the Blind and Visually Impaired at 371-2587.

The suggested hourly rates or payment for interpreters for the deaf for classroom settings are $7.50 an hour for a manual interpreter ($10.00, if CSC Level); $6.50 per hour for an oral interpreter and from $3.00 to $5.00 per hour and notetakers, depending on the individual college or university's pay scale for such services. There are no set fees for reader services for the blind. These services are generally provided by other students and the cost does not usually exceed the hourly minimum wage.

We look forward to cooperating with you in this opportunity to increase educational opportunities for deaf and blind students.

Sincerely,

E. Russell Baxter, Commissioner
DIVISION OF REHABILITATION SERVICES

ERB/da

cc: Gary Chamberlin
Lou Rives
Gloria Kemp
Lewis Urton
Don Thurman
Vince Bond
Harold Williams
Vernon Glenn